No. [redacted]

In The Supreme Court of The United States

October Term, 1968

DESERT OUTDOOR
ADVERTISING, INC.,

Appellant,

vs.

COUNTY OF SAN BERNARDINO, et al.,

Appellees

On Appeal From the Court of Appeal of the State of California, Fourth Appellate District, Division Two

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AFFIDAVIT OF DAVID K. KROLL
RE: LATE DOCKETING OF APPEAL

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AFFIDAVIT OF DAVID K. KROLL
RE: LATE DOCKETING OF APPEAL

I, David K. Kroll, being first duly sworn, hereby depose and say:

Since January, 1963, I am and have been an attorney at law licensed to practice before the courts of the State of California. I have further been admitted to practice before the Circuit Court of Appeals for the Ninth Circuit of the United States, and the District Court of the United States for the Southern District of California. In

association with J. Perry Langford, Esq., I am one of the attorneys for Appellant Desert Outdoor Advertising, Inc., herein.

In early February of 1968, I was retained by the Appellant to pursue and perfect an appeal to the Supreme Court of the United States in the within case. A petition for hearing had been denied by the California Supreme Court on January 3, 1968. At that time, and at the present time, I was and am inexperienced with practice before the United States Supreme Court. In early February, 1968, I consulted and did basic research in the San Diego County Law Library for the purpose of determining the applicable rules of Supreme Court practice and procedure. I thoroughly reviewed the book entitled SUPREME COURT PRACTICE, by Robert L. Stern and Eugene Gressman (BNA, Inc., 1962 ed.) and noted the Supreme Court Rules as set out in the appendix to that book. I further consulted the Supreme Court Rules volume of U.S.C.A., Title 28, with the specific purpose of determining if there had been any changes in the Rules since the printing of the Stern and Gressman book in 1962. At that time the 1966 Cumulative Annual Pocket Part was inserted in said volume, and it did not contain the rule changes enacted in April 1967. I noted that the changes made in the rules between 1962 and those contained in the 1966 Pocket Part did not affect the time for filing of the Notice of Appeal. I believed that sixty additional days were still provided for the filing of the Jurisdictional Statement after the initial ninety days from entry of final judgment. At that time I made photocopies of the pertinent Rules for my file, and future reference. Throughout my later research at the San Diego Law Library, and in all my communications with fellow members of the Bar, I did not learn that Rule 13 had been revised in April 1967 and that the additional sixty-day period had been cancelled. On March 29, 1968, within the original ninety-day period, I caused the Notice

of Appeal to be prepared and filed in the Court of Appeal herein. I then proceeded to prepare the Jurisdictional Statement in the belief that the last day to file the same would be May 27, 1968.

On the evening of May 10, 1968, in completing research for the Jurisdictional Statement, I had occasion to again consult the Rules volume of Title 28 U.S.C.A. On that occasion I found to my surprise and horror that the Rules had indeed been revised in April 1967, and that the Jurisdictional Statement could not be timely filed and that the time had passed in which to apply for an extension. On May 13, 1968, I telephoned the Clerk of the Supreme Court and learned that a late docketing could be accepted. I completed the Jurisdictional Statement on May 14, 1968, and delivered it to the printer on May 15, 1968. Docketing has been completed with no delay thereafter.

By reason of the above, the late docketing of the Appeal herein was caused entirely by mistake and inadvertence. I truly believed that I had consulted all applicable sources of Supreme Court Rules and that the latest rules provided for an additional sixty days, to May 27, 1968, in which to docket the record and file the Jurisdictional Statement.

WHEREFORE, I pray that the Supreme Court exercise its discretion and accept the late docketing of this appeal.

Respectfully submitted,

/s/ DAVID K. KROLL
Associate Counsel for Appellant.

POINTS AND AUTHORITIES

Pittsburgh Towing Co. v. Mississippi Valley Barge Line, 385 U.S. 32 (1966).